

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Competitive Product Prices
International Business Reply Service
Competitive Contract 3 (MC2011-21)
Negotiated Service Agreements

Docket No. CP2013-57

PUBLIC REPRESENTATIVE COMMENTS ON
POSTAL SERVICE NOTICE OF FILING A FUNCTIONALLY EQUIVALENT
INTERNATIONAL BUSINESS REPLY SERVICE COMPETITIVE CONTRACT 3
NEGOTIATED SERVICE AGREEMENT

(April 9, 2013)

The Public Representative hereby provides comments pursuant to Order No. 1690.¹ In that Order, the Commission established the above referenced docket to receive comments from interested persons, including the undersigned Public Representative, on a Postal Service's Notice of its entry into an additional International Business Reply Service (IBRS) contract.²

Prices and classifications "not of general applicability" for IBRS contracts were previously established by Governors' Decision No. 08-24.³ In Order No. 684, the Commission added the International Businesses Reply Service Competitive Contract 3 product to the competitive product list, and included within that product an IBRS competitive contract that would serve as the baseline agreement for functional equivalence comparisons with future agreements.⁴ The Commission subsequently

¹ Notice and Order Concerning Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 3, 2013 (Order No. 1690).

² Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 2, 2013 (Notice).

³ Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, Docket Nos. MC2009-14 and CP2009-20, December 24, 2008.

⁴ Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket Nos. MC2011-21 and CP2011-59, February 28, 2011 (Order No. 684).

included the IBRS competitive contracts filed in Docket Nos. CP2011-61, CP2011-70, CP2012-16, CP2012-17, CP2012-18, CP2012-54, CP2012-59 and CP2013-50 within the International Businesses Reply Service Competitive Contract 3 (MC2011-21) product.⁵

IBRS competitive contracts included within the International Businesses Reply Service Competitive Contract 3 product permit businesses that sell lightweight articles to consumers in foreign countries to offer those consumers a convenient method of returning the articles to the United States for “recycling, refurbishment, repair, or other value-added processing”. Notice at 5.

In the current Docket, the Postal Service requests that the Commission includes the instant contract within the IBRS Competitive Contract 3 (MC2011-21) product based on its functional equivalence to the baseline agreement filed in Docket Nos. MC2011-21 and CP2011-59 (IBRS 3 baseline contract). Notice at 1-3 and 6. The instant contract is also the successor to, and is with the same customer as, the contract that was the subject of Docket No. CP2012-18, which expired on March 31, 2013. *Id.* at 3. The instant contract will expire one year after its effective date, April 22, 2013, unless termination occurs earlier. *Id.* at 3-4.

COMMENTS

The Public Representative has reviewed the negotiated contract and supporting financial model filed under seal that accompanies the Postal Service’s Notice. Based upon that review, the Public Representative concludes that the instant contract is

⁵ Order Approving an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket No. CP2011-61, March 11, 2011 (Order No. 693); Order Approving an Additional International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, Docket No. CP2011-70, September 9, 2011 (Order No. 844); Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, Docket No. CP2012-16, February 27, 2011 (Order No. 1260); Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, Docket No. CP2012-17, March 9, 2012 (Order No. 1280); Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, Docket No. CP2012-18, March 27, 2012 (Order No. 1298); Order Adding Contract to International Business Reply Service Competitive Contract 3 Product, Docket No. CP2012-54, September 13, 2012 (Order No. 1467); Order Approving New International Business Reply Service Competitive Contract 3 Agreement, Docket No. CP2012-59, September 27, 2012 (Order No. 1480); Order Approving New International Business Reply Service Competitive Contract 3 Agreement, Docket No. CP2013-50, February 25, 2013 (Order No. 1668).

functionally equivalent to the baseline agreement. In addition, it appears that the negotiated prices in the instant contract should generate sufficient revenues to cover costs and satisfy the requirements of 39 U.S.C. § 3633.

Functional Equivalence. The Postal Service asserts that the instant contract is functionally equivalent to the IBRS 3 baseline contract “in that it shares similar cost and market characteristics . . . [and the] functional terms of the contract included in the filing and the functional terms of the IBRS 3 baseline agreement are the same.” *Id.* at 4. The Postal Service confirms that there are “minor differences between the instant contract and the IBRS 3 baseline agreement” that include: an additional phrase in Article 15 stating that the Postal Service may be required to file information in connection with the contract in other Commission dockets including PRC Docket Nos. ACR2013, ACR2014 and ACR2015; and an additional Article 30 concerning Intellectual Property, Co-Branding, and Licensing. *Id.* at 5-6. The Public Representative has also noticed the difference in Article 6 related to the accounting fees (Article 6.1) or method of paying postage (Article 6.3). Notice, Attachment 1, at 2-3. In the reference to the Domestic Mail Manual (DMM), the instant agreement refers to DMM 505.1, while the baseline agreement refers to DMM 507.9. The Public Representative believes that such difference does not produce any material discrepancy between the initial agreement and the agreement serving as a baseline for it. However, the Public Representative suggests that it would be useful for the Commission to receive clarification from the Postal Service regarding the reason for such difference relatively soon after issuance of the Commission’s decision. This would complete the record.

The Public Representative agrees with the Postal Service that the differences observed between the initial and baseline contract “do not affect either the fundamental service that the Postal Service is offering or the fundamental structure of the agreement”. Notice at 6. The Public Representative concludes that the instant contract is functionally equivalent to the baseline agreement.

Requirements of 39 U.S.C. § 3633. Pursuant to 39 U.S.C. § 3633(a), the Postal Service’s competitive prices must not result in the subsidization of competitive products by market dominant products; ensure that each competitive product will cover its

attributable costs; and, ensure that all competitive products collectively contribute an appropriate share of the institutional costs of the Postal Service. Based upon a review of the financial model filed under seal with the Postal Service's Notice, it appears that the negotiated prices in the instant contract should generate sufficient revenues to cover costs and thereby satisfy the requirements of section 3633(a).

The Public Representative respectfully submits the foregoing comments for the Commission's consideration.

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